

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
7:13-CR-3-FL

UNITED STATES OF AMERICA)	
)	
v.)	ORDER OF DETENTION PENDING
)	TRIAL
GORDIANO RUFINO PEREZ-FELIPE,)	
)	
Defendant.)	

This case came before the court today for hearing on the government's motion, pursuant to 18 U.S.C. § 3142(f), to detain defendant pending trial. The government presented the testimony of an agent with the Department of Homeland Security. Defendant did not present any evidence. The court also reviewed the pretrial services report. After careful consideration pursuant to 18 U.S.C. § 3142(g) of the credible information and argument submitted, and based on the findings and reasons stated below and in open court, the court finds by clear and convincing evidence that there is no condition or combination of conditions that will reasonably assure defendant's appearance as required. The government's motion is therefore GRANTED.

Background

Defendant was charged in a six-count indictment on 8 January 2013 with: misuse of a social security account number on or about 13 January 2009 (ct. 1) and 3 January 2012 (ct. 3) in violation of 42 U.S.C. § 408(a)(7)(B); aggravated identity theft on or about 13 January 2009 in violation of 18 U.S.C. § 1028A(a)(1) (ct. 2); false representation of United States citizenship on or about 18 July 2012 (ct. 4) and 11 December 2012 (ct. 5) in violation of 18 U.S.C. § 911; and eluding examination and inspection by immigrations officials sometime in 2004 and continuously thereafter up through and including on or about 11 December 2012 in violation of 8

U.S.C. §1325(a)(2) (ct. 6). The evidence presented at the hearing showed that he is a citizen of Guatemala illegally in the United States. He used the identity of a United States citizen in Puerto Rico for various purposes, including applying for a driver's license in North Carolina, in contacts with immigration officers, and in other activities. Defendant admitted to the testifying agent that he was a citizen of Guatemala and that he had bought the false identification documents (*i.e.*, birth certificate and social security card) of the United States citizen in Puerto Rico.

Discussion

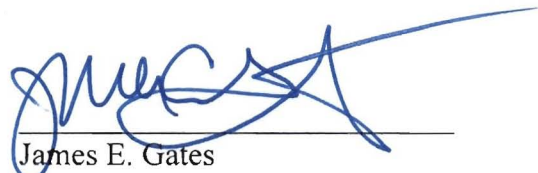
The law requires that defendant be detained pending trial based on the following principal findings and reasons: evidence showing that the government has a strong case, including the evidence reviewed above; the immigration- and fraud-related nature of the offenses charged; the circumstances of the offense charged, including defendant's use of the identity of another actual person; the danger of defendant's continued use of false identities to hide his immigration status if released; the significant prison term defendant faces if convicted; the existence of an immigration detainer on defendant; and the other findings and reasons stated in open court.

The court considered evidence offered as mitigating, such as his lack of a criminal record, but finds that the factors favoring detention outweigh such evidence. He currently faces the likelihood of a significant prison term followed by deportation. He therefore has an intense incentive to flee now and avoid the prison sentence. The fact that a son was recently born to him tends to enhance, rather than diminish, this incentive.

Conclusion

IT IS THEREFORE ORDERED that defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. Defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the government, the person in charge of the corrections facility shall deliver defendant to the United States Marshal for the purpose of an appearance in connection with a court proceeding.

This, the 8th day of February 2013.



James E. Gates
United States Magistrate Judge